

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
MAPA Broadcasting, L.L.C.)	File No. EB-01-OR-138
WSLA(AM))	NAL/Acct. No. 200132620005
Slidell, Louisiana)	FRN 0005-0234-60

MEMORANDUM OPINION AND ORDER

Adopted: May 31, 2002

Released: June 4, 2002

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* ("Order"), we deny a petition for reconsideration filed by MAPA Broadcasting, L.L.C. ("MAPA"), licensee of Station WSLA(AM), of a *Forfeiture Order*¹ which issued a monetary forfeiture in the amount of two thousand five hundred dollars (\$2,500) to MAPA for willful violations of Sections 11.35(a) and 73.49 of the Commission's Rules ("Rules").² The noted violations involved MAPA's failure to install operational Emergency Alert System ("EAS") equipment at WSLA(AM) and its failure to enclose WSLA(AM)'s antenna tower within an effective locked fence or other enclosure. For the reasons which follow, we deny the petition for reconsideration.

II. BACKGROUND

2. On March 14, 2001, agents from the Commission's New Orleans, Louisiana Field Office ("New Orleans Office") inspected WSLA(AM). During the inspection, the agents determined that no EAS equipment was installed. In addition, the agents observed that the gate to the fence surrounding WSLA(AM)'s antenna tower was unlocked. The agents further observed that, although WSLA(AM)'s antenna tower was grounded at the base, the antenna included a "skirt" surrounding the tower. The "skirt" had radio frequency potential and was within reach from the ground near the base of the tower. The agents also observed that the tower was located next to a tract of houses and within one-half mile of a child care center.

3. On April 26, 2001, the New Orleans Office issued a Notice of Violation ("NOV") citing MAPA for violations of Sections 11.35(a) and 73.49 of the Rules. On May 14 and May 21, 2001, MAPA submitted responses to the NOV stating that it had ordered EAS equipment and locked the tower gate.

4. On July 24, 2001, the New Orleans Office issued a *Notice of Apparent Liability* ("NAL") to MAPA in the amount of \$15,000 for failure to install operational EAS equipment in willful violation of Section 11.35(a) of the Rules and failure to enclose the AM antenna tower within an effective locked

¹ MAPA Broadcasting, L.L.C., 16 FCC Rcd 22403 (EB 2001).

² 47 C.F.R. §§ 11.35(a) and 73.49.

fence or other enclosure in willful violation of Section 73.49 of the Rules.³ In its response to the *NAL*, MAPA sought reduction of the forfeiture amount.

5. In its *Forfeiture Order*, released December 19, 2001, the Bureau concluded that MAPA violated Sections 11.35(a) and 73.49 of the Commission's Rules by failing to install operational EAS equipment at WSLA(AM) and failing to enclose WSLA(AM)'s antenna tower within an effective locked fence or other enclosure. The *Forfeiture Order* found that the violations were willful. In addition, the *Forfeiture Order* stated that MAPA's use of a "modified EBS [Emergency Broadcast System] unit with an AM tuner" capable of receiving the EAS transmissions of a New Orleans AM station did not comply with Section 11.35(a) of the Rules, and that the licensee's claim that it was unclear as to the Commission's EAS requirements did not warrant a reduction of the forfeiture amount. Finally, the *Forfeiture Order* reduced the forfeiture amount by nearly 85 percent, from \$15,000 to \$2,500, on the basis of MAPA's inability to pay a larger amount. Following the same proportions set out in the *NAL*, \$1,325 of the forfeiture is attributable to the EAS violation and \$1,175 of the forfeiture is attributable to the locked fence forfeiture.

6. MAPA filed a petition for reconsideration of the *Forfeiture Order* on January 24, 2002. In this petition, MAPA requests that we reconsider and remit the *Forfeiture Order*. MAPA contends that only an admonishment is appropriate in this case. MAPA states that the NOV in this case cited MAPA for violating Sections 11.35(a) (failure to install operational EAS equipment); 17.50 (failure to clean and paint antenna structure); 73.49 (failure to enclose antenna structure within an effective locked fence or other enclosure); 73.1820(a)(1)(iii) (failure to make appropriate entries in station log). MAPA argues that it was unreasonable to add a sanction for failure to comply with Section 73.1820(a)(1)(iii) of the Rules, in addition to a sanction for violating Section 11.35(a) of the Rules. With respect to Section 17.50 of the Rules, MAPA complains that the cleaning and painting of its tower is not a proper basis for any forfeiture in this case.

7. Further, MAPA asserts that it has in place a fence that locks appropriately and that this fence complies with Commission requirements. MAPA states that at the time of the inspection, the gate had been left open for yard maintenance, despite a sign warning that the gate must be locked at all times. MAPA argues that the fact that the gate was opened for maintenance at the time of the inspection is not a violation of Section 73.49 of the Rules. MAPA states that Section 73.49 of the Rules requires that "ready access must be provided to each antenna tower base for meter reading and maintenance purposes at all times".⁴ Moreover, MAPA contends that the Commission has no evidence that the gate had been opened except for maintenance on one occasion. In addition, MAPA argues that its general manager was confused about the licensee's EAS requirements, and that assessment of the base forfeiture amount of \$8,000 for the EAS violation and \$7,000 for the "alleged" fencing violation is unwarranted in this case. Further, MAPA asserts that all of the downward adjustment criteria are applicable.⁵

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200132620005 (Enf. Bur., New Orleans Office, released July 24, 2000).

⁴ 47 C.F.R. § 73.49.

⁵ See 47 C.F.R. § 1.80(b)(4) Note to Paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures (minor violation; good faith or voluntary disclosure; history of overall compliance; and inability to pay).

8. In support of its argument regarding the downward adjustment criteria, MAPA states that its failure to install EAS equipment is a minor violation. It states that the second criterion, good faith or voluntary disclosure, is also applicable because in spite of its general manager's confusion about the EAS requirements, it made a good faith effort to comply by requesting information about its EAS obligations during a Commission inspection in 1998, and by installing the "modified EBS unit" capable of receiving the EAS transmissions of an AM station in New Orleans. In addition, MAPA argues that it has a history of overall compliance. MAPA states that its general manager has had 70 years of experience in his broadcasting career. Finally, MAPA claims that in reducing the forfeiture amount, the *Forfeiture Order* did not demonstrate the basis for reducing the forfeiture amount to \$2,500 rather than a lower amount, or for retaining any forfeiture amount at all.

III. DISCUSSION

9. We are not persuaded that rescission of the forfeiture amount is warranted in this case. Although MAPA correctly points out that the NOV cited MAPA for violations of Sections 17.50 and 73.1820(a)(1)(iii) of the Rules, no forfeiture was issued based on these violations. Since these violations did not form the basis for the forfeiture assessed in this case, they are of no relevance to a review of the *Forfeiture Order*. We therefore do not address those other matters here.

10. With respect to MAPA's arguments concerning the forfeiture assessed for violating Section 73.49 of the Rules, there is no dispute that the gate to the fence was unlocked at the time of the inspection. The fact that the gate was left open for yard maintenance does not provide a basis for rescission or reduction of the forfeiture below \$1,175 as the licensee is responsible for ensuring compliance with our rules.⁶ Moreover, MAPA's failure to ensure that the gate to the fence was locked posed a threat to public safety, in light of the tower's proximity to a tract of houses and a child care center. Further, because the violation was observed during an inspection, evidence that the gate had been left opened on prior occasions is not necessary to impose a forfeiture for violating Section 73.49 of the Rules.

11. With respect to the EAS violation, we do not believe that not having the required EAS equipment, and therefore, not being able to participate in the EAS program, is a minor violation. In addition, with respect to a reduction based on good faith, given the extensive broadcast experience of MAPA's general manager, we reject its argument that the forfeiture amount should be further reduced below \$1,325 because its general manager was confused as to the Commission's EAS requirements or because it made some other EAS related efforts in the past.⁷ Further, the violations in this case were discovered by inspection; therefore, the violation was not voluntarily disclosed.

12. Regarding the licensee's arguments concerning a reduction of the forfeiture amount based on inability to pay, the *Forfeiture Order* explained the basis upon which we reduced the forfeiture amount to \$2,500. Specifically, the *Forfeiture Order* concluded that a reduction to \$2,500 was

⁶ *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979).

⁷ *Id.*

appropriate in light of the gross revenues indicated by MAPA's 1998, 1999, and 2000 tax returns.⁸ MAPA has not persuaded us that it cannot afford this amount.

13. Finally, MAPA argues that the forfeiture should be reduced because it has no history of prior violations. Had MAPA's history of compliance with the Commission's rules been raised previously, we likely would have reduced the forfeiture from \$15,000 to about \$12,000, prior to reducing the forfeiture to \$2,500 for inability to pay. Given that the forfeiture still would have been \$2,500, we find no basis for further reduction.

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that, pursuant to Section 405 of the Communications Act of 1934, as amended ("the Act"),⁹ and Section 1.106 of the Rules,¹⁰ MAPA's petition for reconsideration of the *Forfeiture Order* in this proceeding IS hereby DENIED.

15. IT IS FURTHER ORDERED that, pursuant to Section 503(b) of the Act¹¹ and Section 1.80 of the Rules,¹² MAPA Broadcasting, L.L.C. shall pay the amount of two thousand five hundred dollars (\$2,500) for the above-stated violations within 30 days of the release date of this *Order*. Payment may be made by check or money order, drawn on a U.S. financial institution, payable to the Federal Communications Commission. The remittance should be marked "NAL/Acct. No. 200132620005, FRN 0005-0234-60" and mailed to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹³ Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 Twelfth Street, S.W., Washington, D.C. 20554.¹⁴

16. IT IS FURTHER ORDERED that, a copy of this *Order* shall be sent by Certified Mail, Return Receipt Requested, to counsel for MAPA Broadcasting, L.L.C., Christopher D. Imlay, Esq.,

⁸ See generally, *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992) (concluding that the forfeiture amount was not excessive in comparison to gross revenues).

⁹ 47 U.S.C. § 405.

¹⁰ 47 C.F.R. § 1.106.

¹¹ 47 U.S.C. § 503(b).

¹² 47 C.F.R. § 1.80.

¹³ 47 U.S.C. § 504(a).

¹⁴ 47 C.F.R. § 1.1914.

Booth, Freret, Imlay & Tepper, P.C., 5101 Wisconsin Avenue, N.W., Suite 307, Washington, D.C. 20016, and to MAPA Broadcasting L.L.C., WSLA(AM), P.O. Box 1175, 38230 Coast Blvd., Slidell, Louisiana, 70459.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau